IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8360 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SALIMMIYA A CHAUHAN - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR BIREN A VAISHNAV for Petitioner(s) : 1,
MS HANSA PUNANI AGP for Respondent(s) : 1,
MR YS MANKAD for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

Date : 20/06/2006
ORAL JUDGMENT

In this petition under Article 226 of the Constitution, the petitioner has challenged the order dated 11.7.1994 (Annexure-E) compulsorily retiring the petitioner from service after holding a departmental inquiry.

2. The petitioner was appointed as a Watchman at the Kabrastan under the Notified area, Gandhinagar in the year 1989. On 30.3.1993, the petitioner was served with a charge-sheet (Annexure-A) to the effect that during the period between 15.2.1992 and 4.3.1992, when the petitioner was asked to work at the Hindu crematorium during the leave period of the regular employee, the petitioner had tampered with the receipt book kept for issuing receipts for sale of wood and had misappropriated a sum of Rs.394.50ps.. The charge-sheet also stated that the amount was deposited by the petitioner on 22.1.1993. The petitioner submitted his reply dated 6.4.1993 to the effect that the amount was retained by the petitioner because his mother was unwell. In his final written submissions dated 4.2.1994 (Annexure-B), the petitioner also pleaded that it was for the first time that the petitioner was entrusted such duty at the Hindu crematorium, while his regular job was that of a watchman at the Kabrastan. The petitioner further submitted that he was pressurized by his superiors to admit the guilt and the petitioner was assured of lenient treatment if such admission was given.

3. The Inquiry Officer submitted his report dated 7.2.1994 (Annexure-C) stating that in his reply to the show-cause notice the petitioner had admitted the guilt, but at the same time, the Inquiry Officer

also observed that the petitioner did not have the experience of monetary transactions like issuing receipts as he was only looking after the Muslim Kabrastan and he had no experience of selling wood and issuing receipts at the Hindu crematorium. The Inquiry Officer also observed that the statements of the witnesses in whose favour the receipts were issued were not recorded during the preliminary inquiry and the petitioner did not got an opportunity to cross-examine those witnesses. The final conclusion of the Inquiry Officer was that the charge levelled against the petitioner was partly proved.

4. The Disciplinary Authority agreed with the conclusion of the Inquiry Officer and issued second show-cause notice dated 7.6.1994 along with a copy of the relevant extract of the Inquiry Officer's report and called upon the petitioner to submit his representation regarding any major penalty which could be imposed. It appears that the petitioner appeared before the Disciplinary Authority on 4.7.1994 and after considering his submissions at the said hearing the Collector, Gandhinagar Ex-officio Administrator of the Notified Area, Gandhinagar passed the impugned order dated 11/12.7.1994 (Annexure-E) holding that the charge levelled against the petitioner was partly proved and imposing the penalty of compulsory retirement. Aggrieved by the said order, the petitioner

approached the Gujarat Civil Services Tribunal, but the petitioner's appeal came to be dismissed on the ground that the petitioner was not a specified civil servant and, therefore, the Tribunal did not have the jurisdiction. The present petition, therefore, came to be filed under Article 226 of the Constitution.

5. Mr Vaishnav, learned counsel for the petitioner has vehemently submitted that when the Inquiry Officer's report itself gave certain findings in favour of the petitioner (which are already referred to in para 3 hereinabove) and the Disciplinary Authority also accepted the Inquiry Officer's report, in view of the said findings, the charge of misappropriation could not be said to have been proved to the hilt. It is submitted that the petitioner's defence before the Inquiry Officer was that some time at the crematorium the relatives of the deceased buy more logs of wood than ultimately required and, therefore, the surplus logs are returned. Hence, when the relatives return such surplus logs, in those cases the petitioner had to make changes in the office copy of the receipts for altering the number of logs and the amount received on behalf of the notified area. However, on account of lack of experience the petitioner did not make those alterations on the original receipts which were already issued to the relatives at the time of sale of logs. It was on account of the lack of

experience that the petitioner did not call upon the relatives to return the original receipts for making alterations in the original receipts as well. Mr Vaishnav further submitted that the Inquiry Officer himself also referred to the said defence and observed in the report that it was doubtful whether the alterations were made in the receipt book for the purpose of misappropriation or on account of the relatives having returned surplus logs of wood.

6. On the other hand, Mr Mankad, learned counsel for respondent No.2 has submitted that in his reply dated 1.7.1992 the petitioner had clearly admitted that the amount was required by the petitioner as the petitioner's mother was not keeping well. The petitioner required money for household expenses. Mr Mankad has also submitted that the material on record of the inquiry proceedings was sufficient to come to the conclusion that the petitioner had misappropriated the amount of Rs.394.50ps. and that it was only after the authorities detected the same that the petitioner deposited the amount in January 1993. It is submitted that the question of taking any lenient view could have arisen only if the petitioner on his own had deposited the amount in question within a very short period of a few days. Mr Mankad also submitted that it was only before the Inquiry Officer that the petitioner took up the defence that the relatives of

some deceased had returned the surplus logs of wood and that such plea was never taken by the petitioner at any earlier point of time before the authorities.

7. Having heard the learned counsel for the parties, it does appears that the observations made by the Inquiry Officer in the inquiry report, which report came to be accepted by the Disciplinary Authority, are to some extent in favour of the petitioner and on the basis of the said observations, the petitioner could have been given the benefit of doubt, but when the matter is examined after taking into consideration the petitioner's reply dated 1.7.1992, it is clear that the petitioner had admitted that the amount was used by him for the purpose of treatment of his ailing mother and for household expenses and when the petitioner could not manage to collect the funds for deposit, the petitioner thought of making alterations in the office copy of the receipts to show lesser amounts than the amounts received and originally acknowledged in the receipts. In view of this admission, and in view of the undisputed position that before issuance of the charge-sheet in the departmental inquiry, the petitioner had never stated that the amounts in question were returned to the relatives of the deceased because they had returned surplus logs of wood, the Court is not inclined to exercise its extraordinary writ jurisdiction under Article 226 of

the Constitution in favour of the petitioner.

8. In view of the above discussion, the petitioner has not made out any case for interference with the impugned order passed by the Disciplinary Authority.

9. The petition is, accordingly, dismissed. Rule is discharged.

(M.S. SHAH, J.)

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